IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 11082 of 1997(T)

PETITIONERS:
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1. **K. PRABHAKARAN NAIR, CHENGAZHAVELIL, PULLAMPADA, PALLIPADU.P.O., ALLEPPEY DISTRICT.**

2. **J. VIJAYALAKSHMI, W/O. K. PRABHAKARAN NAIR, -DO- -DO-.**

3. **SHEELA V. NAIR, W/O. DR. R. SURESH KUMAR, AL-MUFRAQ HOSPITAL, ABU DHABI, REPRESENTED BY POWER OF ATTORNEY HOLDER K. PRABHAKARAN NAIR.**

4. **SINDHU V. NAIR, SREE RAMA ASHRAMAM, THELLIYOOR.P.O., PATHANAMTHITTA DISTRICT.**

5. **THARA NAIR V., 1448-POORVANJAL, JAWAHARLAL NEHRU UNIVERSITY NEW CAMPUS, NEW DELHI - 110 067.**

6. **DR. K. RAJASEKHARAN NAIR, ASSOCIATE PROFESSOR, 1448-POORVANJAL, JAWAHARLAL NEHRU UNIVERSITY NEW CAMPUS, NEW DELHI - 110 067.**

BY ADV. SRI.GOVIND K.BHARATHAN,
ADV. SRI.M.V.RAMACHANDRAN THAMPI,
ADV. SMT.L.P.ANITHA.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE CHIEF INSPECTOR OF PLANTATIONS, KOTTAYAM.**

3. **THE INSPECTOR OF PLANTATIONS, VANDANMEDU.P.O., IDUKKI DISTRICT.**

BY GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 19682/1997 IN O.P. NO. 11082/1997-T

DISMISSED

31/07/2007. **SD/- PIUS C.KURIAKOSE, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1(A): COPY OF THE CARDAMOM ESTATE REGISTRATION CERTIFICATE AS CR. 16997/81 RELATING TO THE P.1.

EXT.P.1.B: COPY OF THE CARDAMOM ESTATE REGISTRATION CERTIFICATE AS CR. 16947/81 RELATING TO THE P.2.

EXT.P.1.C: COPY OF THE CARDAMOM ESTATE REGISTRATION CERTIFICATE AS CR 16948/81 RELATING TO THE P.3.

EXT.P.1.D: COPY OF THE CARDAMOM ESTATE REGISTRATION CERTIFICATE AS CR 22681/93/C5 RELATING TO THE P.4.

EXT.P.1.E: COPY OF THE ESTATE REGISTRATION CERTIFICATE AS CR 22683/93/C5 RELATING TO THE P.5.

EXT.P.1.FCOP, CARDAMOM ESTATE REGISTRATION CERTIFICATE AS CR 22682/93/C5 RELATING TO THE P.6.

EXT.P.2.A: COPY OF THE FORM C RELATING TO THE P.1. FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY DEPUTY LABOUR OFFICER, NEDUNKANDAM ON 12/07/1996.

EXT.P.2.B: COPY OF THE FORM C RELATING TO THE P.2. FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY THE DEPUTY LABOUR OFFICER, NEDUMKANDAM ON 12/07/1996.

EXT.P.2.C: COPY OF THE FORM C RELATING TO THE P.3. FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY THE DEPUTY LABOUR OFFICER, NEDUMKANDAM ON 12/07/1996.

EXT.P.2.D: COPY OF THE FORM C RELATING TO THE P.4. FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY THE DEPUTY LABOUR OFFICER, NEDUMKANDAM ON 12/07/1996.

EXT.P.2.E: COPY OF THE FORM C RELATING TO THE P.5. FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY THE DEPUTY LABOUR OFFICER, NEDUMKANDAM ON 12/07/1996.

EXT.P.2.F: COPY OF THE FORM C RELATING TO THE P.6 FOR THE YEAR ENDING 1995-96, COUNTERSIGNED BY THE DEPUTY LABOUR OFFICER, NEDUMKANDAM ON 12/07/1996.

O.P. NO. 11082/1997-T:

EXT.P.3: COPY OF THE SHOW CAUSE NOTICE DTD. 27/12/1996 NO. 368/96 ISSUED BY THE R.2.

EXT.P.4.A: COPY OF THE TELEGRAM SENT ON 13/01/1997 BY THE P.1. TO THE R.2.

EXT.P.4.B: COPY OF THE TELEGRAM DTD. 13/01/1997 WITH RECEIPT, SENT BY THE P.2. TO THE R.2.

EXT.P.5.A: COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY THE P.1. TO THE R.2.

EXT.P.5.B: COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY THE P.2. TO THE R.2.

EXT.P.5.C: COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY THE P.3. TO THE R.2.

EXT.P.5.D: COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY THE P.4. TO THE R.2.

EXT.P.5.E: COPY OF THE REPLY TO THE SHOW CAUSE SENT BY THE P.5. TO THE R.2.

EXT.P.5.F: COPY OF THE REPLY TO THE SHOW CAUSE NOTICE SENT BY THE P.6 TO THE R.2.

EXT.P.6: COPY OF THE SUMMONS ISSUED TO THE PETITIONERS WHO HAVE BEEN ACCUSED IN CALENDER CASE NOS. ST. 210/97, ST.211/97, ST.216, ST.217/97 AND ST. 218/97 BEFORE THE JUDICIAL MAGISTRATE OF THE 1ST CLASS, NEDUMKANDAM.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

O.P.No. 11082 OF 1997

Dated this the 31st day of July, 2007

J U D G M E N T

In this original petition under Article 226 of the Constitution of India the petitioners are challenging the prosecution proceedings initiated against them by the respondents 2 and 3, viz., Chief Inspector of Plantations, Kottayam and the Inspector of Plantations, Vandanmdeu for the alleged violation of the provisions of Plantation Labour Act, 1951, Minimum Wages Act, 1948 and the Kerala Industrial Establishments (National and Festival Holidays) Act and Rules 1959. They pray for a declaration that these respondents have no manner of authority to prosecute them. They seek a writ of certiorari to quash Exts.P6 common summons issued to them by the Judicial Magistrate of the First Class, Nedumkandam in S.T. Nos. 210/97, 211/97, 216/97, 217/97 and 218/97. They also seek ancillary and related reliefs. According to them the first petitioner was in absolute ownership and possession of a a total extent of 17.85 acres of land forming part of a cardamom estate which originally was known as Valpara Estate by virtue of registered document of 1981. In this document title is traced to a partition deed of 1954. First petitioner disposed of a total extent of 14.35 acres from out of the above properties in 1988 by three

registered documents and was left with ownership and possession of just 3.50 acres of cardamom plantation. Under Ext.P1(a) cardamom estate registration certificate the above property was registered as cardamom estate against CR. No. 16997/81 in Form B of certificate of registration of registered owner under the Cardamom Act by the Tahsildar, Udumpanchola, the registering officer. In the same manner by virtue of registered sale deeds of 1981 and after assignment of portions by registered sale deeds in favour of others, the second petitioner is having absolute ownership and possession of 5.76 acres of cardamom land forming part of the erstwhile Valpara Estate and Ext.P1 (b) is the copy of the certificate of registration issued by the registering authority in the name of the second petitioner. Third petitioner has possession of just 6.60 acres of cardamom land forming part of Valpara Estate having ownership and possession by virtue of registered documents and the third petitioner's cardamom estate stands registered by the registering officer as a cardamom estate and Ext.P1(c) is copy of the registration certificate in favour of the third petitioner. In the same manner the 4th petitioner has ownership and possession of 6.5 acres of cardamom estate and the above cardamom estate has been registered in the name of the 4th petitioner and Ext.P1

(d) is photocopy of the registration certificate in the name of the 4th petitioner. Similarly the 5th petitioner owns and possesses 6.5 acres of cardamom estate forming part of original Valpara Estate and Ext.P1(e) is copy of the registration certificate in favour of the 5th petitioner. Ext.P1(f) relates to 6.5 acres of cardamom estate standing in the name of 6th petitioner by virtue of registered documents. It is pointed out that third, fourth and fifth petitioners are children of first and second petitioners and 6th petitioner is the husband of the 5th petitioner. According to the petitioners they were holding their estates independently under separate registration certificates and were cultivating the same independently as separate estates. Each of the petitioners were maintaining separate records for all purposes including the Minimum wages Act. It is pointed out that the records maintained under the Kerala Minimum Wages Rules in Form No. 11 including records for payment of of bonus in form No.C for the accounting year 1995-96 were countersigned by the Deputy Labour Officer Nedungandom and Ext.P2(a) photo copy of the relevant forms is relied on. It is pointed out that as P2(a) first petitioner has three permanent workers, one temporary worker and one staff. Ext.P2(b), ©, (d), (e) and (f) are corresponding documents pertaining to

petitioners 2 to 6 and these documents are relied on to show that the second petitioner has five permanent workers and three temporary workers, the third petitioner has six permanent workers and three temporary workers, 4th petitioner has four permanent workers and three temporary workers, the 5th petitioner has four permanent workers and three temporary workers and the 6th petitioner has four permanent workers and three temporary workers. On the basis of the above documents petitioners claim that each of the petitioners have been maintaining separate records for permanent and temporary workers employed by them and that these records have been accepted and countersigned by the Labour Department and its officials till the accounting year 1995-96.

2. While so, all the petitioners were individually served with show cause notices by the third respondent Inspector of Plantations, Vandanmedu under the Plantation Labour Act and Rules, Minimum Wages Act and Rules and the Kerala Industrial Establishment (National and Festival Holidays) Act and Rules. In the show cause notices the name of the estate is shown as Valpara Estate at Mavadi P.O. And all the petitioners were clubbed and shown as employers of the Valpara Estate at Mavadi. Ext.P3 is copy of one such show cause notice. In

Ext.P3, seven alleged violations under the Plantation Labour Act and Rules, three violations under the Minimum Wages Act and Rules and three violations under the Kerala Industrial Establishment (National and Festival Holidays) Act and Rules were alleged against the petitioners and they were directed to show cause within seven days as to why prosecution should not be initiated against them. According to the petitioners they had no notice at all regarding the alleged visit of the inspectors nor was any one of them present during the alleged visit in which the alleged violations were detected. Petitioners are residing in different parts of the country and one of them is abroad. It was not possible for the petitioners to send reply to the show cause notice with in the stipulated time of seven days. They however sent individual telegrams Exts.P4(a), P4 (b) and similar telegrams to the third respondent seeking one month's time to submit reply to the show cause notice. Thereafter Exts.P(a)m (b), (c), (d), (e) and (f) replies were submitted. Common contentions raised through the reply was that the properties have been separately held under separate ownership and possession and that at no point of time the entire estate came to the co-ownership of the petitioners or the labour force in their individual estates exceed 15 in number. Petitioners requested

on the basis of the replies that the proceedings proposed against them be dropped. But ignoring the replies criminal cases were registered against the petitioners as ST. Nos. 210, 211, 216, 217 and 218 of 1997. Ext.P6 is copy of the summons received by the second petitioner. The petitioners submit that issue of summons is totally illegal and there is absolutely no basis in fact or in law which vest with the respondents 2 and 3 the jurisdiction to proceed against them under the provisions of the Plantation Labour Act, the Minimum Wages Act and the Kerala Industrial Establishments (National and Festival Holidays) Act and Rules. Petitioners have raised various grounds and filed the original petitioner for the reliefs already indicated.

3. The third respondent has filed a detailed counter affidavit wherein it is contended that the petitioners are the owners and employers of Valpara Estate at Marvadi, Nedungandom. The estates are the component part of the old Valpara Estate, Mavady which was included in the list of plantations as on 31-12-1958. Thus the plantations owned and controlled by the petitioners come under the purview of the Plantation Labour Act and Rules and other Labour Enactments. Third respondent inspected the establishment at 1 p.m. on 8-11-1996 and at the time of his inspection 62 workers were seen

working in the plantation and the violation of various provisions under the Plantation Labour Act, Minimum Wages Act and the Kerala Industrial Establishments Act and the Rules under these statutes were noticed. It was on that basis that show cause notices were issued. Petitioners have statutory obligation to implement the provisions of the above statutes. That obligation was not discharged. Therefore third respondent had no option other than to launch prosecution against them. The present writ petition is without basis and the grounds raised therein are false. The Valpara Estate, Mavady is a plantation defined under section 2(f) of the Plantation Labour Act, 1951. The said estate is included in the list of plantations as on 31-12-1958 published by the Government of Kerala which is an authenticated record. The petitioners are present proprietors of the Valpara Estate. It is also pointed out that the first petitioner signed an agreement for himself and on behalf of other petitioners before the Deputy Labour Officer, Nedungandom on 22-12-1995 when an industrial dispute arose between themselves and workers. That agreement would show that the petitioners are co-owners. Reply was not submitted to the show cause notice within the stipulated time. That is why the third respondent presumed that no reply had to be given. Counter affidavit

goes on to deny each and every averment in the writ petition and the grounds raised therein.

4. I have heard the submissions of Sri. Govindh K.Bharathan, counsel for the petitioner and those of Sri.Shyson P.Manguzha, learned Government Pleader. I have also gone through the documents pressed into service by the petitioners in support of their case that they are maintaining their portions of the erstwhile Valpara Estate as independent cardamom estates of their own. It was conceded at the Bar that the decision to initiate prosecution proceedings against the petitioners was taken by the respondents without hearing the petitioners on the basis of the replies which they have submitted to the show cause notices. The excuse of the respondents for not considering the replies is that the replies were not submitted in time. But the explanation offered by the petitioners for the delay in the matter of submission of replies cannot be said to be totally inconvincing. I am of the view that the third respondent should take a fresh decision on the liability of the petitioners to be prosecuted after hearing them on the basis of the replies Exts.P5 series. To that extent the original petition will stand allowed. The complaints pending trial before the Judicial First Class Magistrate Court, Nedungandom as ST

Nos. 210, 211, 216, 217 and 218 of 1997 are quashed. The third respondent is directed to take a fresh decision on the liability of the petitioners to be prosecuted for the offences alleged against them on the basis of Ext.P5 series replied. A decision as directed above shall be taken after issuing notice to the petitioners and after hearing them. The above direction will be complied with by the third respondent at the earliest and at any rate, within six months of receiving copy of the judgment. Petitioners shall produce copy of this judgment before the third respondent as soon as they receive the same.

(PIUS C.KURIAKOSE, JUDGE)

ksv/

PIUS C. KURIAKOSE, J.

O.P. No. 11082 OF 1997

JUDGMENT

31-7-2007